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51874 7590 11/05/2010 LAW OFFICES OF CHARLES W. BETHARDS, LLP P.O. BOX 1622 COLLEYVILLE, TX 76034				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WYATT ALLEN HUDDLESTON, DAVID JOHN SCHWARTZ,
and STEVEN WOJNOWSKI

Appeal 2009-006535
Application 10/045,724¹
Technology Center 2400

Before MARC S. HOFF, CARLA M. KRIVAK, and THOMAS S. HAHN,
Administrative Patent Judges.

HOFF, *Administrative Patent Judge.*

DECISION ON APPEAL²

¹ The real party in interest is Motorola Inc.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Non-Final Rejection of claims 1-22. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention concerns communications networks suitable for brokering or making available control instructions that can be updated as required for intelligent devices or equipment (Spec. 3). A user programs a desired function into a wireless internet access device (WIAD) such as a remote control. The WIAD identifies the intelligent device and the desired function to a web site, which returns to the WIAD a subset of control instructions accessible by or via the web site for controlling the intelligent device. In turn, the WIAD forwards the subset of control instructions to the intelligent device to effect the desired function (Spec. 5-6).

Claim 1 is exemplary of the claims on appeal:

1. A method for command brokering on behalf of an intelligent device, comprising the steps of:
 - defining in a wireless internet access device (WIAD) a desired function to be performed by the intelligent device, the desired function being only a portion of all functions that the intelligent device is capable of performing;
 - identifying the intelligent device and the desired function to a web site having access to control instructions for the intelligent device, the identifying provided by the WIAD, through a wireless communication network;
 - returning, to the WIAD from the web site, only a subset of the control instructions for controlling the intelligent device to perform the desired function; and
 - forwarding the subset of the control instructions from the WIAD to the intelligent device to effect the desired function,
- wherein the WIAD does not have a complete set of the control instructions for the intelligent device.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Hayes	US 2002/0140571 A1	Oct. 3, 2002
Escobosa	US 2003/0151538 A1	Aug. 14, 2003
Baun	US 2003/0197930 A1	Oct. 23, 2003
Maymudes	US 6,748,278 B1	Jun. 8, 2004

Claims 1-3, 5, 8, 9, 11-13, 15, and 17-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Escobosa in view of Hayes.

Claims 4, 6, 7, 14, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Escobosa in view of Hayes and Maymudes.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Escobosa in view of Hayes and Baun.

Throughout this decision, we make reference to the Appeal Brief (“App. Br.,” filed July 7, 2008) and the Examiner’s Answer (“Ans.,” mailed August 27, 2008) for their respective details.

ISSUES

Appellants argue that Escobosa does not explicitly teach identifying a function to a web site; that Escobosa teaches sending an icon and numeric code, but does not provide control instructions for a device (App. Br. 14); that Escobosa teaches only downloading all basic functions, not “only a subset” as the claims require (App. Br. 15); and that Hayes does not supply the teaching missing from Escobosa, because Hayes teaches only changing the look and feel of a remote control, not affecting a desired function in the intelligent device (App. Br. 16).

Appellants' contentions present us with the following issues:

1. Does Escobosa teach identifying a desired function to a web site?
2. Does Escobosa teach providing control instructions for an intelligent device?
3. Does Escobosa teach downloading only a subset of the control instructions for controlling the intelligent device to perform the desired functions?
4. Does Hayes supply the teaching, conceded by the Examiner to be missing from Escobosa, of defining a desired function in the wireless internet access device itself?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Escobosa

1. Escobosa teaches that a user may select, on a web site, functions (commands) to be downloaded to a remote control, which a user may invoke by pressing one of the programmable "blank" keys of the remote control (Fig. 5b; ¶ 0056).
2. A user may 'drag and drop' key functions onto the remote control as desired. These functions are added to the remote when the configuration is downloaded, whereas the other functions found on selection 66a are left on the selection palette, thus not added to the remote and their functionality not downloaded (¶¶ 0056-0059).
3. Escobosa teaches sending sequences of pre-programmed instructions to perform various operations (¶ 0065).

4. Escobosa teaches that a user who has just purchased a new audio amplifier may be instructed to log in to a web site, where the user may download code data for the new device, as well as instructions and remote control sequences, *into his remote* (¶ 0066, emphasis added). Such sequences may include macro sequences or steps for balancing volume levels on surround sound speakers, setting equalizer values to match room acoustics, etc. (*Id.*).

Hayes

5. Hayes teaches that remote control key defining can be done within the universal remote itself (Hayes Fig. 5, ¶¶ 0123-0130).

PRINCIPLES OF LAW

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007).

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

ANALYSIS

CLAIMS 1-3, 5, 8, 9, 11-13, 15, and 17-22

We select claim 1 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' argument that Escobosa does not explicitly teach identifying a function to a web site (App. Br. 14) is not persuasive to show Examiner error. Escobosa Figure 5b clearly illustrates that a user may select, on a web site, functions (commands) to be downloaded to a remote control, which a user may invoke by pressing one of the programmable "blank" keys of the remote control (FF 1).

Appellants' argument, summarized *supra*, that Escobosa's web site has nothing to do with providing control instructions for a particular device (App. Br. 14), is likewise unpersuasive. Escobosa teaches, for example, sending sequences of pre-programmed instructions to perform various operations (FF 3). These (numeric) instructions cause the intelligent device to execute not merely one command, but several commands in sequence. Escobosa teaches, as a further example, that a user who has just purchased a new audio amplifier may be instructed to log in to a web site, where the user may download code data for the new device, as well as instructions and remote control sequences, *into his remote* (FF 4, emphasis added). Such sequences may include macro sequences or steps for balancing volume levels on surround sound speakers, setting equalizer values to match room acoustics, etc. (*Id.*).

We are likewise not persuaded by Appellants' argument that Escobosa does not teach downloading "only a subset" of the control instructions for controlling the intelligent device to perform the desired function (App. Br.

15), nor forwarding the subset to the intelligent device (*Id.*). According to Appellants, Escobosa's teaching of a "base" remote control whose keypad preferably includes a small set of basic functions expected to be required by everyone, together with a number of "blank" customizable keys (§ 0043), does not meet the claimed "subset" because "all basic functions" are included, not merely a subset (App. Br. 15). We agree with the Examiner's finding, however, that Escobosa Fig. 5b illustrates the process of customizing the remote to associate functions with the blank, customizable keys (Ans. 8-9; FF 1). A user may 'drag and drop' key functions onto the remote control as desired. These functions are added to the remote when the configuration is downloaded, whereas the other functions found on selection 66a are left on the selection palette, thus not added to the remote and their functionality not downloaded (FF 2).

Appellants' argument, summarized *supra*, that Hayes does not supply the teaching conceded to be missing from Escobosa is unpersuasive. Escobosa teaches defining a desired function (using a PC). Hayes demonstrates that the key defining shown in Escobosa can be done within the universal remote itself (Ans. 10; FF 5). We agree with the Examiner's reasoning that the combination would allow a user to redefine the menus for a particular (intelligent) device without the need for the user computer 24 of Escobosa, resulting in substantial time savings (Ans. 10).

Appellants have not shown error in the Examiner's § 103 rejection of claims 1-3, 5, 8, 9, 11-13, 15, and 17-22. Accordingly, we will sustain the rejection.

CLAIMS 4, 6, 7, 14, AND 16

Appellants' argument that Maymudes does not remedy the deficiencies of Escobosa and Hayes (App. Br. 19) is not persuasive, because we do not find deficiencies in the Examiner's combination of Escobosa and Hayes, as explained *supra*.

Appellants have not shown error in the Examiner's § 103 rejection of claims 4, 6, 7, 14, and 16, and we will sustain the rejection.

CLAIM 10

We are not persuaded by Appellants' argument that Baun does not remedy the deficiencies of Escobosa and Hayes (App. Br. 19), because we do not find deficiencies in the Examiner's combination of Escobosa and Hayes, as explained *supra*.

Appellants thus have not shown error in the Examiner's § 103 rejection of claim 10 and we will sustain the rejection.

CONCLUSIONS

1. Escobosa teaches identifying a desired function to a web site.
2. Escobosa teaches providing control instructions for an intelligent device.
3. Escobosa teaches downloading only a subset of the control instructions for controlling the intelligent device to perform the desired functions.
4. Hayes supplies the teaching, conceded by the Examiner to be missing from Escobosa, of defining a desired function in the wireless internet access device itself.

ORDER

The Examiner's rejection of claims 1-22 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

ELD

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